

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

DA'VETTA FLOWERS

PLAINTIFF

v.

No. 4:18-cv-577-DPM

KENDALL W. PENN, Major General,
Adjutant General for the State of
Arkansas

DEFENDANT

ORDER

1. Flowers's motion *in limine*, Doc. 86, is partly granted and partly denied. Here are the Court's rulings:

- **Workplace Complaints against Flowers**

Denied, with directions. Porterfield's deposition testimony (29:1-14 & 66:7-15) is fine. If any other decisionmaker involved in the August 2017 selection of Bruno over Flowers had received reasonably recent complaints from those Flowers supervised, that evidence is relevant and admissible. Flowers may cross, though, on whether any such complaint carried any weight and whether this is a belated reason for the decision.

- **Norris's Lawsuit against the Arkansas Military Department**

Granted without objection.

- **The Emergency Hire Program**

Denied. The reasons behind the Department's use of the emergency hiring process in 2017 are at the core of this case. Weighing competing proof about whether the implementation of that process in this instance deviated from typical departmental practices is a jury task. The jury is entitled to the proof from both sides.

2. Penn's motion *in limine*, Doc. 82, is partly granted and partly denied. Here are the Court's rulings:

- **Evidence and Testimony of Dismissed Claims**

Granted without objection.

- **Flowers's Mental Health Treatment**

Partly granted and partly denied. Most of the treatment records at issue deal directly with claims that have passed out of the case. Those are excluded.

There is, however, some admissible material here. First, it's clear that Dr. Courtney Crutchfield's care and treatment of Flowers predated the 12 June 2018 encounter. The note from that encounter is admissible. And Dr. Crutchfield will be allowed to explain that note and how it relates to the alleged deterioration of Flowers's mental health stemming from the August 2017 non-promotion. Second, the billing records are admissible to the extent that Dr. Crutchfield's testimony or Flowers's testimony can tie each entry to the existing claims. That may open the

door to Penn's introduction of the otherwise excluded treatment records to refute the total amount of damages. In that event, the Court will rule contemporaneously on any objections that arise.

- **Other Lawsuits against the Arkansas Military Department**
Granted without objection.

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So Ordered.

D.P. Marshall Jr.
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United States District Judge

12 November 2021